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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

ENTERTAINMENT TELEVISION

By Hand Delivery

October 13, 1994

Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 918
Washington, DC 20554

CABLE SERVICES
OCT 14 7 15 AM '94

Re: Comments of E! Entertainment Television, Inc.
MM Docket No. 92-266
Permitted Written Ex Parte Presentation

Dear Ms. Jones:

We here at E! Entertainment Television, Inc. (E!) are grateful to the Chairman, the FCC Commissioners, the members of the Cable Services Bureau and the staffs, for your willingness to meet with representatives of E! over the course of recent consideration of revisions to the "going forward" rules. As a provider of video programming, E! is vitally concerned that the Commission's new regulations should not adversely affect the ability of existing programmers to continue to invest in improving the quality and vitality of their services, and that the Commission's regulations should instead promote consumer choice and the availability of the products they desire.

By this comment letter, we would like to outline our position regarding certain issues which we understand are currently under consideration by the Commission. While there are, obviously, many issues of concern to E! in connection with your formulation of going forward rules, the following are matters of particular interest and import to video programmers, and which we understand are currently the objects of debate.

- **Retention of 7.5% Mark-Up On Programming Cost Increases**

The rules currently provide that increases in programming costs charged by video programmers may be passed through to consumers, along with a maximum 7.5% mark-up on the amount of the increase (we are referring to a mark-up on increases in the license fee charged by existing services on a system, not to the mark-up allowed for the addition of new services on a regulated tier). We are concerned that the Commission may be considering a repeal of the 7.5% mark-up allowed on increases in programming costs.

Our concern is rooted in our belief that in order for E! (and other similarly situated video programmers) to continue to invest in the quality

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fee, reasonably, over time. If cable operators cannot maintain their level of return on their investment in new programming, they will not tolerate even our modest annual license fee increases, and we will see no growth in our revenue. This will seriously erode our ability to invest in programming, which ultimately adversely affects the breadth and quality of the product provided to the consumer.

In addition, we believe that by eliminating the mark-up for increases in the cost of existing programming, while implementing incentives for adding new programming, the rules would unfairly discriminate in favor of the addition of new services and against the retention and growth of existing services. E! is a network currently made available to approximately 27 million homes, or less than one-third of the domestic cable television market. We are, of course, in favor of incentives which promote growth of our distribution. However, we do not think that Commission rules should sacrifice programmers' long-term ability to invest in the vitality and quality of programming in exchange for short-term incentives to grow distribution.

To promote the creation and continued growth of video programmers and the availability of a wide variety of choice to consumers, the Commission's rules must promote both increases in distribution of new networks and the growth of existing programming services.

• Incentives For Added Channels - 25¢ Per Service, $1.50 Cap

In previous filings with the Commission, E! has supported a flat per channel mark-up for the addition of new services to regulated tiers. We feel that this concept fairly balances the interests of video programmers of different size, maturity and cost. Coupled with a reasonable cap on total annual increases for new services at least ($1.50), this proposal will promote continued growth in the variety of programming available to consumers, without subjecting them to unreasonable rate increases.

In order to be effective, this structure must allow for a per channel mark-up which makes the addition of new services on regulated tiers a realistic alternative to pure à la carte carriage. As we have demonstrated in our discussions and prior filings, new services and smaller existing services cannot grow, or likely survive, if only purely à la carte distribution is available.

Having discussed distribution with every major cable system not carrying E!, we have determined that, by and large, *unless systems are able to include a mark-up of approximately 25¢, they are unlikely to consider adding new services to their regulated tier line-ups.*

In our view, it is also important for the Commission to include rules which prevent the per-channel incentive and the annual rate increase cap from combining to incentivize only the addition of no cost and very low cost services. *We believe that the Commission should strive to implement rules allocating license fee and mark-up pass-throughs which will cause channel addition decisions to be based upon the quality of the programming offered the consumer. not solely upon the potential financial return to the cable operator.*

• Timely Resolution Of Going Forward Issues

The industry-wide stagnation caused by the pendency of the Commission's new rules is having a devastating effect on video programmers. Since the implementation of the most recent rate rules. E! has experienced virtually zero growth in its distribution.

Cable operators consistently report to us that they are delaying any decision on the addition of new programming services until the finalization of the going forward rules. While we are hopeful that rules favorable to our business will be implemented, it is equally important that some resolution of the going forward issues emerge very soon. We are confident that we can compete and succeed in a vibrant market for video programming services; however, the stasis we are experiencing during this extended waiting period threatens our operating viability.

In order to complete administrative necessities and comply with FCC notice requirements, if cable operators are to add new programming for 1995 their decisions will have to be made in the very near future. Generally, 1995 channel line-ups must be set by the end of October. *E! and other similarly situated video programmers will be unable to invest in new, innovative, quality programming in 1995 if final going forward decisions are not made in a timely manner.*

Thank you for your attention to these comments. By quickly adopting E!'s suggestions, the Commission can insure that progress in the creation and improvement of programming services will continue and still ensure that rates for regulated cable will remain reasonable.

Respectfully submitted,

E! ENTERTAINMENT TELEVISION, INC.

Mark B. Feldman
Vice President
Business & Legal Affairs

cc: William F. Caton
Secretary
Federal Communications Commission
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